

DECISION



27791

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:B-213252

DATE: March 27, 1984

MATTER OF: REL Incorporated

DIGEST:

An urgent award made notwithstanding a size protest to a company, later determined to be other than small, will not be terminated where delay would adversely affect the public interest and the contract is almost complete.

REL Incorporated (REL) protests award to Metric Systems Corporation (Metric) of a contract under request for proposals (RFP) No. N00123-83-R-0422, a small business set-aside issued by the Naval Regional Contracting Center for various quantities of "I" and "J" Band Transmitters.

We deny the protest.

Three offers were received, with Metric's at \$308,187, approximately 30 percent less than the other two offers. After initial evaluation, the offer of Metric was found technically acceptable and the other two offers were found to be outside the competitive range on the basis of price. All three offerors had self-certified as small businesses on the RFP.

Upon being notified of the proposed award to Metric, REL timely notified the contracting office that, as shown on a Securities and Exchange Commission report, Metric and its affiliates exceeded the maximum number of employees to qualify as a small business concern. The contracting officer inquired concerning the effect of a delay in award and was advised by the Pacific Missile Test Center, the user activity, that delay of award beyond September 30, 1983, would result in undue delay to the introduction of the high-speed, antiradiation missile system into the Fleet.

The contracting officer therefore made a determination and finding that it was in the public interest to award the contract notwithstanding the size protest and the contract was awarded to Metric on September 29, 1983. REL filed this protest with our Office on October 4, 1983.

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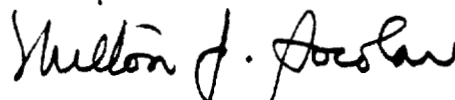
The size status of Metric was referred to the Small Business Administration (SBA) on October 14, 1983. The SBA notified the Navy on November 28, 1983, that Metric was found to be other than small.

On inquiry by the Navy, Metric advised that it is owned by Tech-Syn Corporation. Metric further advised that Tech-Syn Corporation still qualified as small when last checked in the fall of 1982, which was approximately a year earlier. Metric alleges, however, that since it had not grown in the interim, it had no occasion to recheck and that the false self-certification was unintentional.

Navy contends that since the award was made prior to a determination that Metric was not small, the award was proper. Navy also contends that the contract should not be canceled or terminated for convenience because of the urgency of the procurement and because the erroneous self-certification was, at worst, negligent and not an intentional misrepresentation.

We believe the Navy has adequately justified the urgency of the award and, therefore, the award complied with the requirements of § 3-508.2(b) of the Defense Acquisition Regulation (1976 ed.), notwithstanding the size protest.

The Navy reports that as of November 23, 1983, 23 percent of the contract cost had been expended by Metric. The contract provided for delivery by 180 days after contract award. Since the contract was awarded on September 29, 1983, the completion date is on or about March 29, 1984. We have not recommended termination for convenience where disruption of the contract would unduly delay performance. See Capital Systems Group, Inc., 59 Comp. Gen. 717 (1980), 80-2 CPD 190. The contract was awarded notwithstanding a protest because delay of performance would have an adverse effect on defense. Consequently, we do not recommend termination of the present contract.

for 
Comptroller General
of the United States